

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Action No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. B&H MAINTENANCE & CONSTRUCTION, INC., a New Mexico corporation;
2. JON PAUL SMITH a/k/a J.P. SMITH; and
3. LANDON R. MARTIN,

Defendants.

---

**INDICTMENT**

---

**THE GRAND JURY CHARGES:**

**Count One: Sherman Act, 15 U.S.C. § 1**

**I.**

**Description of the Offense**

1. Beginning in or about June 2005, and continuing until as late as December 2005, the exact dates being unknown, in the State of Colorado and elsewhere,

**B&H MAINTENANCE & CONSTRUCTION, INC.,  
JON PAUL SMITH a/k/a J.P. SMITH; and  
LANDON R. MARTIN,**

the defendants herein, and their co-conspirators entered into and engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of

the Sherman Act (15 U.S.C. § 1).

2. The combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which were to submit non-competitive and rigged bids to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado.

## **II.**

### **Means and Methods**

3. For the purpose of forming and carrying out the combination and conspiracy, the defendants and their co-conspirators took various actions, including among other things:

- a. Discussing among themselves the prospective submission of bids for pipeline construction projects;
- b. Allocating pipeline construction projects among themselves;
- c. Designating which co-conspirator would submit the low bid for the project and which coconspirator would submit a higher, complementary bid for the project;
- d. Submitting non-competitive, rigged bids to BP America Production Company as agreed upon;
- e. Accepting payment from BP America Production Company for work done on pipeline construction projects awarded as a result of non-competitive and rigged bids submitted in furtherance of the conspiracy; and
- f. Concealing and attempting to conceal the conspiracy.

## **III.**

### **Defendants and Co-conspirators**

4. During the period covered by this Indictment, defendant B&H MAINTENANCE

& CONSTRUCTION, INC. was a corporation organized and existing under the laws of the State of New Mexico, with its principal place of business in Eunice, New Mexico, and various regional offices, including one located in Bloomfield, New Mexico. During the period covered by this Indictment, defendant B&H MAINTENANCE & CONSTRUCTION, INC. was engaged in the pipeline construction business in the State of Colorado and elsewhere.

5. During the period covered by this Indictment, defendant JON PAUL SMITH a/k/a J.P. SMITH was engaged in the pipeline construction business in his capacity as vice president and general manager of the B&H Maintenance & Construction, Inc. regional office in Bloomfield, New Mexico.

6. During the period covered by this Indictment, defendant LANDON R. MARTIN was engaged in the pipeline construction business in his capacity as marketing manager of the B&H Maintenance & Construction, Inc. regional office in Bloomfield, New Mexico.

7. Another corporation and another individual, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

8. Whenever in this Indictment reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

#### IV.

##### Trade and Commerce

9. During the period covered by this Indictment, the defendants and their co-

conspirators caused substantial quantities of essential materials and equipment used in the construction of natural gas pipelines to be transported across state lines in a continuous and uninterrupted flow of interstate commerce and in a manner substantially affecting interstate commerce, for use in pipeline construction projects rigged by the defendants and their co-conspirators. In addition, the defendants and their co-conspirators caused rigged bids to be electronically submitted from New Mexico to the BP America Production Company office in Houston, Texas, where they were processed. Further, the defendants and their co-conspirators caused rigged bids to be delivered from New Mexico to the BP America Production Company office in Durango, Colorado, which was responsible for the work on the pipeline construction projects rigged by the defendants and their co-conspirators.

10. During the period covered by this Indictment, the business activities of the defendants and their co-conspirators in connection with the construction of natural gas pipelines that are the subject of this Indictment were within the flow of, and substantially affected, interstate trade and commerce.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

**THE GRAND JURY FURTHER CHARGES THAT:**

**Count Two: Tampering With a Witness, 18 U.S.C. § 1512(b)**

11. **JON PAUL SMITH a/k/a J.P. SMITH** is hereby indicted and made a defendant on the charge contained in Count Two of this Indictment.

12. Each and every allegation contained in Paragraphs 1-3 and 5 of this Indictment are realleged with the same full force and effect as though said Paragraphs were set forth in full herein.

I.

**Background**

13. Since January 2006 the FBI has been investigating, among other things, possible violations of federal criminal statutes, including violations of the antitrust laws in Colorado and elsewhere.

14. Since January 2006 a federal grand jury sitting in the District of Colorado has been investigating, among other things, possible violations of federal criminal statutes, including violations of the antitrust laws in Colorado and elsewhere. On or about January 10, 2006, the federal grand jury issued a subpoena *duces tecum* to B&H Maintenance and Construction, Inc. and a subpoena *ad testificandum* to defendant J.P. SMITH.

15. On or about January 11, 2006, a Special Agent with the FBI interviewed defendant J.P. SMITH concerning the circumstances surrounding the submission of bids by B&H Maintenance and Construction, Inc. to BP America Production Company for the construction of pipelines to transport natural gas from wells in the Upper San Juan Basin in Colorado.

16. On or about January 11, 2006, defendant J.P. SMITH told the FBI Special Agent that he had never talked about a bid or exchanged bid prices with a competitor until after the bid was submitted to the company that requested the bids, knowing that what he told the FBI Special Agent was false.

17. On or about January 11, 2006, federal investigators served defendant J.P. SMITH, in his capacity as vice president and general manager of B&H Maintenance and Construction, Inc., with a grand jury subpoena *duces tecum* addressed to B&H Maintenance and Construction, Inc. The grand jury subpoena required the production of certain documents related to possible violations of the criminal antitrust laws.

18. On or about January 11, 2006, federal investigators served a grand jury subpoena *ad testificandum* on defendant J.P. SMITH, commanding him to testify before the grand jury sitting in the District of Colorado on February 28, 2006.

19. On or about January 11, 2006, after he was interviewed by the FBI Special Agent, defendant J.P. SMITH telephoned a co-conspirator in the antitrust conspiracy described in Count One of this Indictment, whose identity is known to the Grand Jury ("Antitrust Co-Conspirator") at the Doubletree Hotel in Tulsa, Oklahoma. During that telephone conversation, defendant J.P. SMITH:

- a. Inquired whether the Antitrust Co-Conspirator had been interviewed by the FBI concerning bids submitted for the construction of pipelines;
- b. Inquired whether the Antitrust Co-Conspirator had been subpoenaed to testify before the Grand Jury sitting in the District of Colorado;
- c. Related the substance of his conversation with the FBI to the Antitrust Co-Conspirator;
- d. Informed the Antitrust Co-Conspirator he had told the FBI that he had never discussed bid prices with a competitor before a bid;
- e. Further informed the Antitrust Co-Conspirator that he had told the FBI that he and the Antitrust Co-Conspirator had never exchanged bid prices;
- f. Asked the Antitrust Co-Conspirator if he knew what documents or other information the FBI had;
- g. When informed that the FBI was probably in possession of a competitor's bid on which B&H bid prices were written, told the Antitrust Co-Conspirator that no one could prove when those bid prices were written on the documents.

20. On or about January 11, 2006, the defendant,

**JON PAUL SMITH a/k/a J.P. SMITH**

knowingly attempted to corruptly persuade a co-conspirator in the antitrust conspiracy described

in Count One of this Indictment, whose identity is known to the Grand Jury, with the intent to: (a) influence, delay or prevent that person's testimony in an official proceeding, that is, the federal grand jury sitting in the District of Colorado investigating, among other things, possible federal criminal violations of the antitrust laws; and (b) hinder, delay, or prevent the communication to a law enforcement officer, that is, a Special Agent of the FBI, of information relating to the commission or possible commission of a Federal offense, including, among other things, possible federal criminal violations of the antitrust laws in Colorado and elsewhere.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1512(b).

**Jurisdiction and Venue**

21. The combination and conspiracy charged in Count One of this Indictment was carried out, in part, within the District of Colorado within the five years preceding the return of this Indictment.

22. The official proceeding identified in the offense charged in Count Two of this Indictment was a federal grand jury empaneled in the District of Colorado when the subpoenas were issued and served.

A TRUE BILL: s/Foreperson, Foreperson

s/Thomas O. Barnett  
THOMAS O. BARNETT  
Assistant Attorney General

s/Marvin Price  
MARVIN PRICE  
Chief, Midwest Field Office

s/Scott D. Hammond  
SCOTT D. HAMMOND  
Deputy Assistant Attorney General

s/Diane C. Lotko-Baker  
DIANE C. LOTKO-BAKER

s/Marc Siegel  
MARC SIEGEL  
Director of Criminal Enforcement

s/Carla M. Stern  
CARLA M. STERN

Antitrust Division  
U.S. Department of Justice

s/Mark D. Davis  
MARK D. DAVIS  
Attorneys, Antitrust Division  
U.S. Department of Justice  
Midwest Field Office  
209 S. LaSalle Street  
Chicago, IL 60604  
Tel.: (312) 353-7530  
[diane.lotko-baker@usdoj.gov](mailto:diane.lotko-baker@usdoj.gov)  
[carla.stern@usdoj.gov](mailto:carla.stern@usdoj.gov)  
[mark.davis3@usdoj.gov](mailto:mark.davis3@usdoj.gov)

s/Troy A. Eid  
TROY A. EID  
United States Attorney for the  
District of Colorado